

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

NORMAN DOUGHTY
Claimant

VS.

SUPERIOR INDUSTRIES
Respondent
Self-Insured

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Docket Nos. 172,869
& 172,870

ORDER

Respondent requests review of findings made by Special Administrative Law Judge William F. Morrissey in his Award of January 30, 1995.

APPEARANCES

Claimant appeared by and through his attorney, Timothy A. Short of Pittsburg, Kansas. Respondent and its insurance carrier appeared by and through their attorney, John I. O'Conner of Pittsburg, Kansas.

RECORD AND STIPULATIONS

The Appeals Board has reviewed and considered the record listed in the Award. The Appeals Board has also adopted the stipulations listed in the Award.

ISSUES

The issues to be considered on appeal are:

- (1) Whether claimant has established accidental injury arising out of and in the course of his employment.
- (2) The nature and extent of claimant's disability.
- (3) The amount of claimant's average weekly wage.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, the Appeals Board finds and concludes as follows:

The Appeals Board finds that the injury for which claimant seeks benefits in this claim did not arise out of and in the course of his employment.

As indicated in the Award by the Special Administrative Law Judge, the record contains conflicting evidence relating to the dates claimant suffered injury at work and at home. The description below, from our review of the record, appears to be the most consistent or likely version.

Claimant testified that he injured his low back at work on October 28, 1992 while trying to turn over a mold and that he notified his supervisor. Claimant's version of when he notified his supervisor is unclear but the supervisor insists that claimant did not notify him of any injury until November 2, 1992. This gap is significant because the record shows claimant worked 10 hours on October 29, 9½ hours on October 30 and 4 hours on October 31. On October 31, 1992, before he notified his supervisor of any injury, claimant stood up from a chair at home and experienced severe pain causing him to fall to the ground. The most likely version is one which indicates he first experienced pain down his leg from the incident of October 31, 1992. Claimant then experienced a second injury at home on November 9, 1992 when he bent over to dry his feet after getting out of the shower.

Examining and treating physicians concluded claimant has disc damage. Two physicians, Dr. Roger W. Hood and Dr. Randall Hendricks diagnosed a protruding disc while Dr. Edward Prostic diagnosed a herniated disc. These three physicians also gave opinions regarding the cause of the disc damage. Dr. Hood and Dr. Hendricks gave opinions indicating this damage occurred as a result of the injuries at home. Dr. Prostic, on the other hand, testified that in his opinion the injury was the result of the work-related incident.

Based upon our review of the record the Appeals Board concludes the claimant's need for medical and other benefits resulted from an accidental injury at home, not at work. This conclusion is based both on the opinions of Dr. Hendricks and Dr. Hood and also on the fact claimant worked his regular duties and regular hours until the injury at home. The record does not, in our opinion, meet claimant's burden of establishing that his permanent injuries resulted from an accidental injury arising out of and in the course of his employment. Accordingly, claimant's request for benefits should be denied.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Special Administrative Law Judge William F. Morrissey dated January 30, 1995 should be, and the same is hereby, reversed.

Fees necessary to defray the expenses of administration of the Workers Compensation Act are hereby assessed against the respondent to be paid directly as follows:

William F. Morrissey Special Administrative Law Judge	\$150.00
Martin D. Delmont Transcript of Regular Hearing	\$ 72.90
Deposition of Norman Doughty	\$361.95
Deposition of Ray Kimrey	\$101.90
Deposition of Robert M. Peters	\$ 90.95
Deposition of Karen Sherwood	\$182.95
Hostetler & Associates Deposition of Edward J. Prostic, M.D.	\$213.00
Deposition of Roger W. Hood, M.D.	\$238.45

Patricia K. Smith	
Deposition of M. Ellen Nichols, M.D.	\$ 81.80
Deposition of Chris Kahn	\$ 74.65
Deposition of Larry Goodall	\$ 39.45
Deposition of Jeffrey A. Greenberg, M.D.	\$ 57.60
Barbara K. Naegler	
Deposition of Randall Hendricks, M.D.	Unknown

IT IS SO ORDERED.

Dated this ____ day of July 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

DISSENT

We respectfully disagree with the analysis and conclusions of the majority and would find that claimant did sustain personal injury by accident arising out of and in the course of employment with the respondent for which he is entitled to receive workers compensation benefits.

BOARD MEMBER

BOARD MEMBER

c: Timothy A. Short, Pittsburg, KS
John I. O'Connor, Pittsburg, KS
Philip S. Harness, Director